

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 171 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NIRMLABEN V SHAH

Appearance:

GOVERNMENT PLEADER for Petitioner
MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 28/07/97

ORAL JUDGEMENT

1 The State of Gujarat through inspecting officer, court fee has preferred the present CRA against the respondents, more particularly, respondent No.6-the original plaintiff. The original plaintiff is already served with summons of the court but has preferred not to appear and Mr.H.S.Munsha who appears for respondent No.3

herein who is defendant No.2 in the suit supports the petitioner.

2. It appears that the original plaintiff--Smt.Nirmalaben Vinayakant Shah instituted Special C.S.No.725/87 in the court of Civil Judge (SD) Baroda against Kantibhai Narsibhai Patel, Vimlaben Muljidas Patel and Smt.Vasuben Rasiklal Patel interalia contending that the suit property which is situated in Alkapuri area of Baroda on R.C.Dutt Road where a house adjacent to the house of the plaintiff known as "Nirmala Nivas" which is a pucca house. On the groundfloor of the said house there are five rooms and one kitchen which are in possession of the defendant, i.e. Kantibhai Narsinhbhai Patel. In the paragraph relating to cause of action it is further alleged that after 14.9.87 which was granted to defendant No.1-Kantibhai Narsinhbhai Patel was revoked and he was called upon to handover the possession and thereupon said defendant No.1 requested for a period of one month to vacate the house and on expiry of such period of one month on or around 20.10.87 he failed to handover the peaceful and vacant possession. In para 9 of the valuing while valuing the suit for jurisdiction and for determining the amount of court fee the plaintiff stated that the said groundfloor portion of the building comprising of five rooms and kitchen and situated in posh locality of Alkapuri of Baroda, for the relief of possession the suit was valued at Rs.50,000/- and court fee of Rs.2,500/- was accordingly affixed. In para which was the relief clause relief of peaceful and vacant possession was claimed and in para 10(2) the relief of mesne profits at the rate of Rs.2,000/-p.m. from 20.10.87 till vacant possession is given was specifically prayed for for which no court fee was affixed or paid. On such a plaint the inspecting officer of Court fee found that there was a specific relief of mesne profits at the rate of Rs.2,000/-p.m. from 20.10.87 till the possession of suit property was handed over. He found that though for the purpose of possession the suit property was valued at Rs.50,000/- and court fee stamp of Rs.2,500/- was paid, for the relief of mesne profits which was determined and claimed at the rate of Rs.2,000/-p.m. from 20.10.87 till the possession was handed over, no court fee was paid. He thereupon filed Court Fee Reference No.20/88 on 2.3.88 under section 12 with a report under section 12(3) of Bombay Court Fee Act and prayed that the plaintiff be called upon to pay proper court fee as he has failed to pay proper court fee. The plaintiff filed his reply, dated 4.4.88 to the said reference and the 4th Jt.Civil Judge (SD), Baroda by judgment and order, dated 29.8.92 has allowed the said

report of the court fee inspector against which the present revision application is filed.

3. Mr.Kamal Mehta, Ld.AGP was at pains to take the court through the plaint, to the paragraph of cause of action, and to the paragraph where for the purpose of jurisdiction the suit was valued and for the purpose of court fee the said suit was valued and court fee was paid. He also pointed out that in the prayer clause there was an independent prayer in para 10(2) for payment of mesne profits at the rate of Rs.2,000/-p.m. starting from 20.10.87 till possession was handed over and therefore he submitted that the report of the Court Fee Inspector was just and proper and was required to accepted.

4. The Ld.4th Civil Judge (SD), Baroda by judgment and order, dated 29.8.92 has allowed the report of the Court Fee Inspector on quite strange and illegal reasonings. He found that the property was valued at Rs.50,000/- on which the court fee was rightly paid but he found that the amount of mesne profits was yet to be determined by the court and the plaintiff was not liable to pay the court fee on such amount. However, he missed to note that the amount of mesne profits was already worked out by the plaintiff at Rs.2,000/-p.m. looking to the area in which the property was situated and the fact that the property comprised of five big rooms and one kitchen. This important averment made in the plaint was unfortunately totally brushed aside by the court and he disallowed the reference of the court fee inspector. In my opinion, the judgment and order of the 4th Jt.Civil Judge (SD) Baroda is not sustainable in law at all especially when the plaintiff has valued the mine profits based on the area in which the property is situated, dimensions and areas rooms and the kitchen and when he has specifically claimed the mesne profits at the rate of Rs.2,000/Op.m., the liability to pay the court fee over said amount can not be brushed aside. In my opinion, the Court Fee Inspector was absolutely justified in making the reference and was absolutely justified in pointing out that separate court fee was required to be paid on the amount of mesne profits which was specifically claimed at the rate of Rs.2,500/-p.m.

5. In the result, report of the Court Fee Inspector is accepted and the plaintiff is called upon to pay additional court fee on the amount of mesne profits at the rate of Rs.2,000/-p.m. and to pay court fee of Rs.2,993.75ps. On such deficit court fee being paid court shall proceed to decide the suit immediately in

accordance with law.

6. In the result, CRA is allowed. Rule is made absolute. No costs.

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